

Sunset Public Hearing Questions for  
**Drycleaner Environmental Response Board**  
Created by Section 68-217-104, *Tennessee Code Annotated*  
(Sunset termination June 2013)

**1. Provide a brief introduction to the Drycleaner Environmental Response Board, including information about its purpose, statutory duties, staff and administrative attachment.**

The Drycleaner Environmental Response Board was established pursuant to TCA 68-217-104 on June 13, 1995. The Act establishes a fund provided by annual registration fees collected from the owner/operator of dry cleaning facilities and a surcharge on drycleaning solvent collected from solvent distributors. The purpose of the Drycleaner Environmental Response Board is to provide oversight of the administration of the Drycleaner Environmental Response Program (DCERP) of the Department of Environment and Conservation. The purpose of the program is to identify and cleanup sites contaminated with solvents from drycleaning operations.

The duties and responsibilities of the Board pursuant to TCA 68-217-105 are as follows:

- develop and approve investigative and remediation strategies;
- establish a mechanism for approving contractors to perform investigation and remediation actions;
- oversee expenditures to maximize funds available for cleanup and minimize administrative expenditures;
- review and accept or deny the petition for entry into the program and prioritize petitions;
- develop rules which establish a process for parties to petition the Board for:
  - entry into the program
  - the expenditure of moneys from the fund for reimbursement of approved investigative or remedial response costs
  - scheduling investigatory and remedial measures
  - an appeal of decisions of the Board's designee;
- develop rules which establish a process for the Board to withdraw the grant of a petition if it is determined that the petitioner is in willful noncompliance of the act or rules;
- authorize payments from the fund to reimburse the cost of an investigative or remedial response undertaken and approved pursuant to its rules;
- develop rules that institute a process for certification of the completion of all necessary investigation and remedial work or that no further investigation and remediation is necessary; and
- Develop and promulgate regulations or guidelines establishing ongoing best management practices for the industry with respect to the handling of drycleaning solvent.

- Delegate any of its duties and responsibilities, other than the authority to promulgate rules and conduct contested cases to the Commissioner.

The Board is administratively attached to the Department of Environment and Conservation (TDEC). The DCERP program was created within the TDEC Division of Remediation. The DCERP staff consists of three positions.

- 2. Provide a list of current board members and describe how membership complies with Section 68-217-104, *Tennessee Code Annotated*. Who appoints members? Are there any vacancies on the board? If so, what steps have been taken to fill the vacancies?**

Current Board members are as follows:

Chairman Paul Krivacka who represents environmental interests. Matt Hash represents small drycleaning operations of no more than ten full-time equivalent employees; Vice-Chairman Brenda Apple is the Commissioners designee. Sheila Ullenberg who represents large drycleaning operations of eleven or more full-time equivalent employees, Cullen Earnest representative of impacted third parties, Dr. Dennis George representative of environmental engineering/scientific community, and Dale Ozier representative of wholesale distributors of drycleaning solvents.

Except for the ex-officio member, the members are appointed by the Governor. The term of the environmental engineering/scientific community Board member, Dr. Dennis George, expired, but he continues to serve.

- 3. Does membership include a member who is sixty years of age or older? A member who is a racial minority? A member who is female?**

The Board has two female members and does not have a minority member. One member, Dr. George, is over 60 years of age.

- 4. What per diem or travel reimbursement do members receive? How much was paid to board members during fiscal years 2011 and 2012?**

The Board does not receive per diem, however the members do receive travel reimbursement pursuant to §68-217-104(b)(4) as established under the provision of Rule 0620-1-1-.02 of the Comprehensive Travel Regulations.

During fiscal year 2011, \$1,269.00 was paid to Board members  
During fiscal year 2012, \$ 830.19 was paid to Board members

**5. What were the board's revenues (by source) and expenditures (by object) for fiscal years 2011 and 2012?**

Program revenue collected by the Department of Environment and Conservation and program expenditures are as follows:

Fiscal Year Ended June 30, 2011

Revenues:

Fees & Surcharges	\$666,317.00
Interest	<u>\$2,913.00</u>
	\$669,230.00

Expenditures:

Personnel Services	\$134,232.00
Employee Benefits	\$52,838.00
Travel	\$2,457.00
Printing and Duplicating	\$58.00
Communications	\$1,567.00
Maint. & Repairs/Misc.	\$60.00
Supplies	\$244.00
Rentals and Insurance	\$18,611.00
Site Reimbursements	\$460,825.00
Training	\$80.00
Services-State Agencies	<u>\$57,168.00</u>
	\$728,140.00

Fiscal Year thru March 31, 2012

Revenues:

Fees & Surcharges	\$851,169.00
Interest	<u>\$1,503.00</u>
	\$852,672.00

Expenditures:

Personnel Services	\$93,118.00
Employee Benefits	\$38,512.00
Travel	\$1,669.00
Printing and Duplicating	\$288.00
Communications	\$1,024.00
Maint. & Repairs/Misc.	\$0.00
Professional and Adm.	\$0.00
Supplies	\$865.00
Rentals and Insurance	\$22,571.00
Site Reimbursements	\$181,962.00
Training	\$250.00
Services-State Agencies	<u>\$25,711.00</u>
	\$365,970.00

**6. How much money has been deposited to the Drycleaner Environmental Response Fund during fiscal years 2011 and 2012? What distributions have been made from the fund? What is the current fund balance?**

During fiscal year ended June 30, 2011 a total of \$669,230.00 was deposited into the fund. Distributions during fiscal year ended June 30, 2011 amounted to \$728,140.00. The distributions include Board expenses, Administrative staff expenses and reimbursements for environmental response activities.

Fiscal year 2012 thru March 31, 2012 a total of \$852,672.00 was deposited into the fund. Distributions fiscal year 2012 thru March 31, 2012 amount to \$365,970.00. The distributions include Board expenses, Administrative staff expenses and reimbursements for environmental response activities.

The current fund balance as of March 31, 2012 is \$1,742,833.12 with an unobligated balance of \$236,838.31.

**7. How many drycleaning facilities, broken down by category, are registered with the Department of Environment and Conservation?**

Currently there are 358 registered drycleaning facilities categorized as follows:

Facilities using Light Solvent: 116

Facilities using Dense Solvent: 202

Abandoned Facilities: 40

**8. How many times did the board meet in fiscal years 2011 and 2012, and how many members were present at each meeting?**

During the period July 1, 2010, through June 30, 2011, four Board meetings were conducted.

July 13, 2010 – six members present

November 09, 2010 – six members present

January 24, 2011 – six members present

May 09, 2011 – five members present

During the period July 1, 2011, through March 31st, 2012, three Board meetings were conducted.

September 12, 2011 – six members present

November 7, 2011 – five members present

January 09, 2012 – five members present

- 9. Is the board subject to Sunshine law requirements (Section 8-44-101 et seq., *Tennessee Code Annotated*) for public notice of meetings, prompt and full recording of minutes and public access to minutes? If so, what procedures does the board have for informing the public of its meetings, who keeps the official minutes of board meetings and what steps are taken to make the minutes available to the public?**

The Board is subject to Sunshine law requirements. Notice of the agenda for each Board meeting is posted on the TDEC web site. Prompt and full recording of minutes are maintained by the Recording Secretary and are available to the public. The program provides inspection/compliance calendars, for recordkeeping, to each registered facility. The calendars include the dates of scheduled board meetings.

- 10. What were the major accomplishments of the board during fiscal years 2011 and 2012? Specifically describe the nature and extent of the board's activities as they relate to each of the board's duties and responsibilities set out in Section 68-217-105(a), *Tennessee Code Annotated*.**

The ongoing work of the program includes:

- Developing and approving investigation and remediation strategies;
- Overseeing expenditures to maximize funds available for cleanup and minimize administrative expenditures;
- Reviewing, acting on, and prioritizing petitions for sites to be accepted into the clean-up program; and
- Authorizing payments from the fund to reimburse the cost of investigation and remedial work.

Here is an example of what was accomplished at one site:

One former drycleaner used perchloroethylene as a cleaning solvent from approximately 1967 through 2003. The facility occupies a 2,100 square foot slab-on-grade single story construction building that is located in an urban mixed land use (commercial/residential) area. Through an investigation conducted under DCERP it was determined that chlorinated constituents were present in soil and ground water. These contaminants posed a risk to the public because this facility became a church when the cleaning business was closed.

The remediation at the site addressed soil and ground water impacts. Contaminated soils were excavated and removed source from under the facility. Injections into ground water conducted to stimulate and promote contaminate removal via reductive dechlorination processes. Indoor air quality testing conducted by DCERP indicated that elevated concentrations of dry cleaning contaminants were present in the church sanctuary and child care nursery. The contaminant concentrations detected exceeded safe levels.

DCERP addressed facility indoor air impacts by installing an active vapor mitigation system in the building floor. This system was installed to prevent drycleaning contaminants from entering the building. The results of air testing show that indoor air quality improved following system installation and operation and that the indoor air at the facility no longer poses a safety risk to the public

**11. What reports does the board prepare on its operations, activities and accomplishments and who receives the reports?**

The Program staff provides written financial reports of site authorizations and program expenses which are discussed at each Board meeting. In addition staff periodically updates the Board on specific investigation or cleanup activities or technologies occurring at sites around the state. Copies of the financial reports are also available to the public.

**12. Does the board have any policies in place to address potential conflicts of interest by board members, board employees, or other state employees who work with the board in any capacity?**

The Board, related to contested cases, is bound by the provisions of UAPA 4-5-302. The Department's conflict-of-interest policy is applicable to TDEC-DCERP staff. The department has conducted new board member orientation over the years including a discussion of the conflict of interest policy.

**13. How many petitions have been presented for entry into the program? How many of these petitions have been accepted by the board? What is the priority ranking of those sites accepted by the board?**

Currently 109 petitions have been presented for entry into the program. With one exception all petitions have been accepted.

The priority ranking is determined after completion of a Facility Inspection and Prioritization Investigation. The Tennessee Drycleaner Environmental Response Program has developed a ranking model to prioritize the remediation of drycleaning solvent release sites. This model, which follows the overall rationale of a risk assessment, facilitates the prioritization process by generating a facility score to quantify the relative risk or threat to human health posed by releases from a drycleaning facility. The program is actively working on 58 sites (43 sites have been completed and eight sites have withdrawn from the program).

**14. Describe any items related to the board that require legislative attention and your proposed legislative changes.**

See item 15.

**15. Should the board be continued? To what extent and in what ways would the absence of the board endanger the public health, safety or welfare?**

At this time a final decision had not been made whether or not this board should be continued. As part of the ongoing implementation of the concepts developed in the Top to Bottom Reviews, the department and the administration are continuing to evaluate whether and how the services of the department can be provided more efficiently. This is not just a simple decision of continuing a board or not because of the likelihood of maintaining aspects of the program, if the decision is made to terminate the board; if aspects of the program folded into our other remediation programs without the board being continued, amendments would have to be made to chapter 217 of Title 68, to shift the board's duties to either the department or to another board. Many sites have been cleaned up that likely would not have been otherwise and the risk of future releases from drycleaning facilities has been reduced through incentives it provides for facilities to use best management practices. As noted above in question 10 & 13, programs under the board jurisdiction remediate contaminated sites to clean up soil or groundwater and protect public health and the environment.

**16. Please list all board programs or activities that receive federal financial assistance and, therefore are required to comply with Title VI of the Civil Rights Act of 1964. Include the amount of federal funding received by program/activity.**

Federal financial assistance includes:

- (1) Grants and loans of Federal funds,
- (2) The grant or donation of Federal Property and interests in property,
- (3) The detail of Federal personnel,
- (4) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and
- (5) Any federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

*28 C.F.R. Sec. 42.102(c)*

The term recipient means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

28 C.F.R. Sec. 42.102(f)

***If the board does receive federal assistance, please answer questions 17 through 24. If the board does not receive federal assistance, proceed directly to question 23.***

Although the Board does not receive federal financial assistance, we have provided the following answers for the Department of Environment and Conservation since the Board is attached to the Department for administrative purposes.

**17. Does your board prepare a Title VI plan? If yes, please provide a copy of the most recent plan.**

TDEC has a Title VI Plan that is developed for and applicable to all TDEC programs.

**18. Does your board have a Title VI coordinator? If yes, please provide the Title VI coordinator's name and phone number and a brief description of his/her duties. If not, provide the name and phone number of the person responsible for dealing with Title VI issues.**

TDEC has a Title VI Coordinator and Complaint Officer.

Coordinator: Costin Shamble (615-253-8337) - Facilitate Title VI compliance activities; review data and make recommendations of actions to enhance Title VI compliance; conduct Title VI training programs; compile Department's Title VI Implementation Plan; represent TDEC at meetings on Title VI.

Complaint Officer: Winston Shurtleff (615-741-8007) - Receives Title VI complaints; conducts an investigation of complaints; facilitates a remedy of Title VI concerns; makes recommendation(s) of actions needed to resolve complaint.

**19. To which state or federal agency (if any) does your board report concerning Title VI? Please describe the information your board submits to the state or federal government and/or provide a copy of the most recent report submitted.**

TDEC is required to submit an annual Title VI Implementation Plan to the Tennessee Human Rights Commission. Additionally, the Plan is submitted to and reviewed by the Title VI Legislative Sub-Committee of the State Legislature. A public hearing is



conducted annually on the Plan. Disadvantaged business participation is submitted to the Environmental Protection Agency.

**20. Describe your board's actions to ensure that board staff and clients/program participants understand the requirements of Title VI.**

Internally:

- Mandatory Civil Rights training of TDEC staff included Title VI
- TDEC Title VI brochure distributed to Department staff
- Periodic discussions with staff, Title VI related actions/activities
- Staff participation in training programs offered by state and federal agencies

Externally:

- Participation in Community Title VI workshops and conferences
- Contract language includes Title VI compliance
- Posting of Civil Rights posters
- Distribution of Title VI brochure

**21. Describe your board's actions to ensure it is meeting Title VI requirements. Specifically, describe any board monitoring or tracking activities related to Title VI, and how frequently these activities occur.**

Minority participation in TDEC programs and activities is reviewed by the Title VI Coordinator. Activities reviewed include: representation on boards, disadvantaged business participation, and public participation. Meetings with the Commissioner's staff are held to discuss minority participation issues at least quarterly.

Disadvantaged business participation is submitted quarterly to the Environmental Protection Agency. A compilation of TDEC's minority outreach and participation is reviewed routinely and compiled annually.

**22. Please describe the board's procedures for handling Title VI complaints. Has your board received any Title VI-related complaints during the past two years? If yes, please describe each complaint, how each complaint was investigated, and how each complaint was resolved (or, if not yet resolved, the complaint's current status).**

TDEC did not receive any Title VI Complaints during fiscal year 2009-2010 or fiscal year 2010-2011.

Complaint procedure:

Complaints must be filed in writing. The complaint should be filed on TDEC's complaint form. The division director of the program will forward the complaint to the Title VI Complaint Officer.

TDEC will make a prompt investigation when a complaint or other information indicating a violation is received. If the investigation indicates a violation of Title VI, TDEC will notify the recipient and will attempt to resolve the matter informally. If the investigation indicates that a violation did not occur, TDEC will notify the recipient and the complainant in writing.

The Title VI Complaint Officer will submit findings and conclusions to TDEC Civil Rights Champions. The Assistant Commissioner will issue a decision on the investigation findings and conclusions. Decisions made by the Assistant Commissioner can be appealed to the Commissioner within 30 days of receipt of the decision.

A complaint may be filed with the appropriate Federal agency no later than 180 calendar days after the alleged discrimination occurred.

Citizen suits remain an option in this process.

TDEC's toll free hotline (1-888-891-8332), accessible statewide, is maintained and available for complaints.

**23. Please provide a breakdown of current board staff by title, ethnicity, and gender.**

Environmental Program Manager 1 (Program Manager), Vacant  
Environmental Specialist 5, White, Male  
Environmental Specialist 4, White, Female  
Administrative Services Assistant 3, White, Male

**24. Please list all board contracts, detailing each contractor, the services provided, the amount of the contract, and the ethnicity of the contractor/business owner.**

The Board/Program does not have any contracts.